



DEPARTMENT
OF REVENUE

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facts

on TAX

128-Bit Encryption Required for DOR Internet Tax Applications



The Florida Department of Revenue is phasing in a requirement for 128-bit encryption, the industry standard for securing confidential information on the Web.

This level of encryption helps to assure that your confidential information is secure when the data is transmitted. For this process to be effective, both the sending and receiving parties must use the same level of encryption.

The Florida Department of Revenue (DOR) uses industry-standard SSL encryption to protect data transmissions. A closed lock image, usually displayed in the bottom bar of your browser, indicates when SSL is in effect on a page or form. This is a visual confirmation that you may safely and securely conduct business electronically with DOR.

If you file and pay your taxes online, your browser is probably already capable of 128-bit encryption because the provider of these applications already uses it.

For more information, including instructions on how to find out if you have a 128-bit browser and where to get 128-bit browsers, go to www.myflorida.com/dor/security/browsers.html.

Coupons, Discounts, Rebates, Free Merchandise, and Other Promotional Gifts

How is Sales Tax Calculated?

Many businesses offer coupons, rebates, gifts, and offers such as “buy one get one free” to attract customers. These discounts and promotions should be considered when determining the “sales price” of an item for the purpose of calculating sales and use tax. Florida law provides that “discounts allowed and taken by sellers at the time of sale” are excluded from the definition of “sales price.”

Generally, the discount is deducted from the sales price **before** computing the amount of sales tax due. But some circumstances call for different treatment, such as when the seller is reimbursed by the manufacturer. The tax treatment of “free” items also depends on the situation, such as whether the customer must purchase an item in order to obtain the free one.

The Department issued Tax Information Publication (TIP) 03A01-20 to help businesses correctly calculate tax on sales that involve coupons, discounts, rebates, free merchandise, etc. This article summarizes the main topics and give examples of some common types of promotional transactions. If your business offers discounts or other promotions, we encourage you to read the TIP in its entirety. You can find it on our web site at www.myflorida.com/dor/tips/tip03a01-20.html.

Coupons



A coupon entitles a purchaser to an immediate

reduction in the sales price of an item. Generally, sales tax treatment of these purchases depends on whether the retailer can be reimbursed by the manufacturer or another party for the coupon.

Manufacturers' Coupons.

When the retailer accepts a manufacturer's coupon, the retailer does not recognize any loss in the profit made on the sale. The manufacturer or another third party reimburses the retailer for the face value of the coupon. The sales price on which tax is based is the total selling price **before** deducting the coupon.

***Example:** A customer, when purchasing laundry detergent, redeems a coupon issued by the manufacturer of the detergent. The sales price of the detergent is \$4.99 and the face value of the coupon is \$0.50. The sales tax is computed on \$4.99 - the sales price **before** deducting the value of the coupon.*

**COUPONS, continued on
page 3**

Corporate Income Tax Federal Bonus Depreciation

During the 2003 legislative session, Chapter 2003-85, Laws of Florida, amended the Florida Corporate Income Tax Code (CIT) to adopt the Internal Revenue Code (IRC) that was in effect on January 1, 2003. On May 28, 2003, the Jobs and Growth Tax Relief Reconciliation Act of 2003 (Act) amended the IRC to provide for increased first year bonus depreciation from 30 percent to 50 percent for assets placed in service after May 5, 2003. Therefore, the additional bonus depreciation deductions were not included in the IRC when Florida passed the 2003 "piggyback bill" of the IRC. In the 2004 session, the Florida Legislature will consider whether Florida will adopt the 50 percent first-year bonus depreciation provisions of the Act.

A taxpayer whose return is affected by the bonus depreciation provisions of the Act may have to decide how to file a Florida CIT return before the Florida Legislature addresses this issue. When making this decision, a taxpayer may wish to consult a tax advisor.

The filing options include:

- The taxpayer may compute and file its Florida CIT return anticipating that the Florida Legislature will adopt the additional bonus depreciation provisions; or
- The taxpayer may compute and file its Florida CIT return anticipating the Florida Legislature will **not** adopt the additional bonus depreciation provisions. Taxpayers that select this option should include an addition to Florida taxable income in the "Other Additions" line of Form F-1120 (Florida Corporate Income/Franchise and Emergency Excise Tax Return), Schedule I, for the extra 20 percent bonus depreciation taken federally on assets placed in service after May 5, 2003. This addition will reflect the deviation between the deduction taken for the additional bonus depreciation on the federal return and the amount allowed on the Florida CIT return, and will also include an adjustment for regular depreciation deduction differences resulting from the different basis of assets caused by the nonconforming bonus depreciation provisions.

The Department will provide additional information on this issue upon action of the Florida Legislature to adopt either of the options listed above or any alternative provisions. This information will include any further steps that may be required of taxpayers, such as the filing of amended returns, paying interest that may be due on underpayments or overpayments of tax, and the compromise of penalties that may be asserted.

This information was published in Tax Information Publication (TIP) 04C01-01, dated January 27, 2004. To obtain a copy of this TIP, see page 5.

Miami Auto Dealer Arrested in \$82,000 Tax Theft Case

The owner of a Miami auto dealership has been arrested on charges that he stole more than \$82,200 in sales tax that he collected from customers but failed to send in to the state.

Isaac E. Elbaz, 33, of Weston, was arrested in December on felony charges relating to theft of sales tax. If convicted, he faces up to 15 years in prison and up to \$10,000 in fines, as well as possible repayment of stolen tax, interest, penalty, and investigative costs. Elbaz operated Aventura Cars at 3520 South Dixie Highway in Miami. The business is no longer in operation.

According to Revenue Department investigators, Elbaz routinely collected sales tax from customers doing business at his repair shop, but failed to send in all of the tax to the state during various times between August

1998 and October 2000. Under Florida law, sales tax is the property of the state from the moment of collection. DOR employees made repeated attempts to bring Elbaz's business into compliance with state law. However, despite promising to comply with law, Elbaz failed to do so. DOR then turned to local prosecutors to file criminal charges. Bank records showed that Elbaz used stolen tax money to pay business and personal expenses, investigators charged.

"To be fair, tax law must apply uniformly to all businesses," said Jim Zingale, executive director of the Revenue Department. "Tax cheats steal money that the public pays to support vital public services, such as law enforcement and education. They also steal a competitive advantage over honest businesspeople who pay their taxes. The Department of Revenue cannot and will not allow this to occur."

If you have information about tax theft, please call the Florida Department of Revenue investigations office in Miami at 305-499-2240.

"Tax cheats steal money that the public pays to support vital public services, such as law enforcement and education."

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Call Kathryn Criscola at 850-488-0108 or send an e-mail to criscolk@dor.state.fl.us. Be sure to give your name and address as it appears on your mailing label.

Retailers' Coupons. When a retailer issues a store coupon, the retailer is reducing the sales price of the item by an amount equal to the face value of the coupon. The retailer reduces its profit on the sale and the value of the coupon is not recovered from any other party. The sales price on which tax is based is the total selling price **after** deducting the coupon. Any additional value assigned by the retailer, such as to double or triple the coupon, is also deducted from the sales price.

Example: A supermarket publishes in an advertising flyer its own store coupon offering \$0.50 off the purchase of a particular laundry detergent. The detergent sells for \$4.99. The sales tax is computed on \$4.49 - the sales price **after** deducting the value of the coupon.

Rebates



Rebates provided by manufacturers to purchasers are not discounts allowed between the seller and the purchaser. The initial purchase of the item and the honoring of a rebate claim by the manufacturer are two separate and distinct

transactions. **Sales tax is computed on the total sales price, without any deduction for the manufacturer's rebate.**

Manufacturers of motor vehicles frequently offer cash rebates to purchasers. The purchaser then typically assigns the rebate to the dealership in order to reduce the amount that the purchaser pays for the vehicle. In addition, motor vehicle dealers may offer their own discounts on vehicles, sometimes termed "rebates." Although discounts or "rebates" offered by dealers may be excluded from the dealers' gross receipts from sales, **rebates paid by manufacturers must be included in the calculation of tax**, even when the purchaser assigns the rebate to the dealer.

Example: An automobile manufacturer offers a \$2,000 rebate on one of its models. In addition, the dealership offers a \$500 discount on the same model, which it terms a "dealer rebate." A customer buying a \$20,000 car assigns his right to the manufacturer's rebate to the dealership, reducing the amount the customer must pay for the car by a total of \$2,500. Sales tax is due on \$19,500 (\$20,000 minus \$500). **Even though the manufacturer's rebate of \$2,000 is applied to reduce the amount being paid by the customer, it may not be used to reduce the tax.**

Gifts and Other Promotional Items



Retailers may offer "two for the price of one" or "buy one get one free" sales and other similar offers. In many cases, the "free" item is transferred only in connection with the purchase of another item. In these cases, the "free" item is actually being sold. The retailer may purchase the item for resale without paying tax.

Sometimes a retailer gives an item to a customer at no charge and the transfer is not connected to a sale of another item. The retailer must pay use tax on its purchase of the item that is given away.

Free gifts given to customers as promotions. When a retailer purchases promotional items that it intends to distribute free of charge, but not in connection with the sale of other items, the promotional items are subject to use tax. A retailer may provide free gifts to all shoppers, such as calendars, pens, and key chains. The retailer may also offer a promotion where certain products are given away, for example, to the first 100 shoppers to enter the store on opening day. In either case, the retailer is responsible for paying use tax on the goods given away, because the customers are not required to purchase anything in order to receive the free items.

Buy one, get one free promotions. In promotions where a customer purchases an item and receives another item of the same kind at no additional charge, the retailer is actually selling both products at the full sales price and offering a seller's discount equal to the value of one of the items. The retailer should collect sales tax on the actual sales price paid by the customer. Use tax is not applicable to the item sold at no charge.

Complimentary gift with purchase of an item. If a retailer provides an extra item or gift to a customer at the time of, and in connection with the sale of, taxable merchandise, the extra item or gift is considered a part of the sale. The retailer should collect sales tax on the actual sales price paid by the customer. The retailer is not required to accrue use tax on the cost of the extra item or gift. However, if the item being purchased is exempt from tax and the extra item or gift is a taxable item, the retailer is responsible for use tax on the extra item or gift.

Example: A retailer offers a free set of sheets to customers who purchase a mattress set. A customer purchases a mattress set for \$999.00 and receives a "free set of sheets." Sales tax is due on \$999.00. No use tax is due on the set of sheets.

Example: A retailer gives a cheese cutter to customers who purchase a package of cheese. The sale of the cheese is not subject to sales tax. Therefore, the retailer is required to pay use tax on the cost price of the cheese cutter.

Technical Assistance Advisements

Technical Assistance Advisements (TAAs) are written statements issued by the Department of Revenue, setting forth the Department's position on the tax consequences of a specific transaction or event under applicable statutes and rules. The TAAs are issued in response to written requests by taxpayers. Since the situations could apply to other taxpayers with the same situation, *Facts on Tax* publishes summaries of the TAAs. All TAAs listed in this publication are maintained in full text in the Florida Department of Revenue Tax Law Library. Administrative rules in the library are updated quarterly to reflect revisions listed in the publication. The library includes seven years of Florida tax statutes, administrative rules affecting taxes, all technical advisories issued by the Department, and Tax Information Publications (TIPs). The library can be accessed from www.myflorida.com/dor. Computer access to the library is also available in your local Department of Revenue service center.

TAX: Sales and Use Tax

TAA NUMBER: 03A-059

ISSUE: Rental of living accommodations

STATUTE CITE(S): Section 212.08(7)(i), F.S.

RULE CITE(S): N/A

QUESTION: What is the taxable status of living accommodations in a transitional housing facility, where the residents consists of the homeless, the mentally ill, and recovering drug addicts?

ANSWER: The rental charges would fall within the exemption provided for rentals to residents of a "... facility designed and operated primarily for the care of persons who are ... dependent on special care or attention."

TAX: Sales and Use Tax

TAA NUMBER: 03A-060

ISSUE: Medical products (respiratory care)

STATUTE CITE(S): Section 212.08(2), F.S.

RULE CITE(S): N/A

QUESTION: What is the taxable status of certain respiratory care products sold in Florida?

ANSWER: In general, any medical product sold or rented to a patient pursuant to a doctor's prescription, or orders, is exempt from tax. Single use "RX" products dispensed and consumed during medical procedures for the benefit of a patient would also be exempt. Medical devices, machinery, and equipment that are purchased by healthcare practitioners for use in their practice are generally taxable. The exception is that certain medical products and certain orthopedic equipment are specifically exempt from tax, regardless of whether a prescription is involved and regardless of whether the product is sold to a patient or to a healthcare practitioner.

TAX: Gross Receipts Tax

TAA NUMBER: 03A-061

ISSUE: Sales of electricity

STATUTE CITE(S): 203.01 and 203.012, F.S.

RULE CITE(S): 12B-6.001, F.A.C.

QUESTION: Are sales of electricity made by the taxpayer to a city, city agencies and a power plant subject to gross receipts tax?

ANSWER: Yes, based on the facts presented: The sales of electricity described in the taxpayer's letter are sales of utility services subject to gross receipts tax. The definition of gross receipts does not include sales for resale or sales that are part of an electrical interchange agreement or contract between utilities for the purpose of transferring more economically generated power. However, the sales of electricity described in the taxpayer's letter are not for resale and are not part of an electrical interchange agreement for the purpose of transferring more economically-generated power.

TAX: Sales and Use Tax

TAA NUMBER: 04A-001

ISSUE: DNA testing for ancestry analysis

STATUTE CITE(S): Section 212.08(7)(v), F.S.

RULE CITE(S): N/A

QUESTION: What is the taxable status of DNA testing and the related analysis performed in order to measure an individual's racial ancestry?

ANSWER: The charge would be exempt from sales tax as a professional service.

TAX: Sales and Use Tax

TAA NUMBER: 04A-002

ISSUE: Public works contracts

STATUTE CITE(S): Section 212.08(6), F.S.

RULE CITE(S): 12A-1.038 and 12A-1.094, F.A.C.

QUESTION: Do the procedures set out in a city's tax-exempt purchasing procedures for public projects for purchase of materials for the construction of a public library meet legal requirements for claiming the city's exemption?

ANSWER: Yes, if the procedures include the following:

- The city issues its own purchase orders directly to the vendors.
- The purchase orders include the city's Consumer's Certificate of Exemption number.
- The vendors invoice the city directly.
- The city issues its checks to the vendors directly.
- The city takes title to the materials from the vendor and assumes liability for the materials when they are delivered to the job site.

TAAs, continued on page 8

Tax Information Publications

The following is a list of Tax Information Publications (TIPs) issued by the Department from December 9, 2003 to February 9, 2004. To receive a copy of any of these publications, visit our Internet site at www.myflorida.com/dor or call Taxpayer Services, Monday – Friday, 8 a.m. to 7 p.m., ET, at 800-352-3671 or 850-488-6800.

TIPS

TIP # 03A01-20

Coupons, Discounts, Rebates, Free Merchandise, and Other Promotional Gifts

Date Issued: December 17, 2003

TIP # 03A01-21

Building Contractors- Application of Discretionary Sales Surtax for Fabrication and Construction Projects

Date Issued: December 31, 2003

TIP # 04B8-01

Florida Life and Health Insurance Guaranty Association (FLAHIGA) Refunds and Reassessments that Result in Refunds

Date Issued: January 15, 2004

TIP # 04B04-01

Documentary Stamp Tax Filing Status Changed to Monthly Beginning January 1, 2004

Date: January 15, 2004

TIP # 04B04-02

Documentary Stamp Tax Filing Status Changed to Quarterly Beginning January 1, 2004

Date: January 15, 2004

TIP # 04B04-03

Documentary Stamp Tax Filing Status Changed to Semiannual Beginning January 1, 2004

Date: January 15, 2004

TIP # 04B04-04

Documentary Stamp Tax Filing Status Changed to Annual Beginning January 1, 2004

Date: January 15, 2004

TIP # 04B06-01

Gross Receipts Tax for Utility Services (Electric or Gas Receipts) Filing Status Changed to Monthly Beginning January 1, 2004

Date: January 15, 2004

TIP # 04B06-02

Gross Receipts Tax for Utility Services (Electric or Gas Receipts) Filing Status Changed to Quarterly Beginning January 1, 2004

Date: January, 15, 2004

TIP # 04B06-03

Gross Receipts Tax for Utility Services (Electric or Gas Receipts) Filing Status Changed to Semiannual Beginning January 1, 2004

Date: January 15, 2004

TIP # 04B06-04

Gross Receipts Tax for Utility Services (Electric or Gas Receipts) Filing Status Changed to Annual Beginning January 1, 2004

Date: January 15, 2004

TIP # 0460BB-01

Unemployment Tax Limited Liability Companies

Date Issued: January 16, 2004

TIP # 04C01-01

Corporate Income Tax Federal Bonus Depreciation

date: January 27, 2004

TIP # 04A19-01

Time Limit for Seeking a Credit or Refund of Communications Services Tax Remitted on a Bad Debt Account

date: February 6, 2004

TIP # 04A01-01

Flagler County Increases Tourist Development Tax from 2 Percent to 3 Percent Beginning March 1, 2004

Date: February 9, 2004

Unemployment Tax and Limited Liability Companies

Effective January 1, 2004, a new law requires that Limited Liability Companies (LLCs) be added to the definition of “employing unit.” It provides that an LLC shall be treated as having the same status as its classification for federal income tax purposes. This change clarifies that members of an LLC, which is classified as a corporation for federal income tax purposes and who perform services for the corporation, are considered employees.

Beginning with the first quarter 2004 UCT-6, any member of a limited liability company classified as a corporation for federal income tax purposes who performed services for the limited liability company is an employee of the limited liability company. For reporting purposes, Florida will treat LLCs in the same way as other reporting entities; i.e., members of an LLC classified as a partnership or a member of an LLC classified as a sole proprietor are not reportable, while members who performed services for an LLC classified as a corporation are reportable.

This information was published in Tax Information Publication (TIP) 0460BB-01, dated January 16, 2004. To obtain a copy of this TIP, see above.

Rules Adopted by Governor and Cabinet for the Period: November 1, 2003 - December 31, 2003

Communications Services Tax

12A-19.043 *Homes for the Aged and Religious and Educational Institutions Exemptions from the Communications Services Tax*

The amendments to this rule define the term "homes for the aged" for purposes of the exemption and provide that a qualified home for the aged is required to issue an exemption certificate to the selling dealer to purchase communications services tax-exempt. They also provide a suggested exemption certificate for such purchases.

Adopted: 11/25/03

Effective: 1/1/04

Property Tax

Rule Chapter 12D-7 Exemptions

12D-7.003 *Exemption of Property of Widows, Widowers, Blind Persons, and Persons Totally and Permanently Disabled; Disabled Veterans*

This rule is amended to clarify the value of the aggregate exemptions under sections 196.202 and 196.24, Florida Statutes, for property of widows/widowers, blind persons, totally and permanently disabled persons, and veterans.

Adopted: 11/25/03

Effective: 1/1/04

Rule Chapter 12D-8 Assessment Role Preparation and Approval

12D-8.0068 *Reduction in Assessment for Living Quarters of Parents or Grandparents*

This rule is created to provide definitions; property qualifications; requirements for qualification of property owners, parents, and grandparents; procedures for obtaining the reduction; and other procedures for property appraisers in relation to the reduction in assessment of living quarters constructed or reconstructed for parents or grandparents.

Adopted: 12/16/03

Effective: 1/26/04

12D-8.011 *Uniform Standards for Computer Operations; Minimum Data Requirements*

This rule is amended to provide exemption type codes for the property appraiser's use in maintaining uniform data processing files.

Adopted: 11/25/03

Effective: 1/1/04

Rule Chapter 12D-13 Tax Collectors Rules and Regulations

12D-13.045 *Sale of Tax Certificates for Unpaid Taxes*

This rule is amended to provide that a tax collector may conduct tax certificate sales electronically.

Adopted: 12/16/03

Effective: 1/26/04

12D-13.060 *Application for Obtaining Tax Deed by Holder of Tax Certificate; Fees*

The amendments to this rule revise the \$15 application fee to \$75 and provide that titleholders of submerged land or common elements in a subdivision that is contiguous to property on which a tax deed application has been made must be included in the tax collector's statement. They also provide an exception where the titleholder is the current owner of the property on which the application has been made.

Adopted: 12/16/03

Effective: 1/26/04

12D-13.062 *Notices; Advertising, Mailing, Delivering and Posting of Notice of Tax Deed Sale*

This rule is amended to provide that the titleholder of contiguous property be provided the warning notice under s. 197.522(2)(b), F.S., of the pending tax deed sale.

Adopted: 12/16/03

Effective: 1/26/04

12D-13.064 *Lands Available for Taxes*

The amendment to this rule provides that the county must notify the titleholder of property contiguous to property on the list of lands available for sale where the county elects not to purchase that property from the list of lands.

Adopted: 12/16/03

Effective: 1/26/04

12D-13.065 *Disbursement of Proceeds of Sale*

This rule is amended to provide that excess funds from a tax deed sale are not distributed to owners of contiguous property.

Adopted: 12/16/03

Effective: 1/26/04

RULES, continued on page 7

Tax-Exempt Food Packaged with Taxable Food or Other Items



Retailers often package multiple items, including taxable and exempt items, for sale as a single item. When a package contains both exempt food products and taxable food products or other items (e.g., a basket of food and candy, a basket of nuts, or decorated cans or glasses filled with food items) and the tax-exempt food products **are separately itemized** from the taxable

products or other items, **no tax is due on the tax-exempt food products**. The retailer is required to collect sales tax on the sale of the taxable products or other items.

When the tax-exempt products are not separately itemized, taxability depends upon the essential character of the complete package.

- When the taxable item or items represent more than 25 percent of the value of the package, the total charge is subject to sales tax.
- When the taxable item or items represent 25 percent or less of the value of the package, the total sale is exempt. The seller is required to pay use tax on any taxable items included in the package that were purchased tax-exempt for the purposes of resale. The cost price of any promotional items included in the package is subject to tax.

Complimentary Food or Drink

Florida law also provides various specific provisions for complimentary meals and other food items, beverage tasting, and donated food or beverages.

Complimentary Food and Beverages.

Dealers whose primary business activities are serving prepared food products or alcoholic beverages for immediate consumption (such as restaurants and bars) are generally required to pay tax on the cost price of complimentary food products provided to customers at no charge. Examples are popcorn, nuts, chips, and pretzels.

Conversely, when dealers of this type provide a complimentary food item or an alcoholic beverage to a customer at the time of, or in connection with, the sale of food or drink, no tax is due from the dealer. The



complimentary food or beverage is considered to be a part of the sale. For example, when a complimentary dessert, beverage, or appetizer is provided to a customer with the purchase of a dinner meal, no additional tax is due.

Grocery stores and other dealers who primarily sell food products at retail are not subject to tax on any food or drink provided without charge as a sample or for the convenience of customers, even when the item is cooked or prepared on the dealer's premises.

Complimentary Meals. Public lodging establishments that advertise that they provide complimentary food and drinks are not required to pay sales or use tax on food or drinks furnished as part of a packaged room rate, when:

- The food or drinks are furnished as part of a packaged room rate;
- No separate charge or specific amount is stated to the guest for such food or drinks;
- The establishment is licensed with the Division of Hotels and Restaurants of the Department of Business and Professional Regulation; and
- The establishment rents or leases transient accommodations that are subject to sales and use tax.

RULES, continued from page 6

Rule Chapter 12D-16 Administration of Forms

12D-16.002 *Index to Forms*

The amendments to this rule incorporate legislative and technical changes to ad valorem property tax forms used by property appraisers, tax collectors, and the general public.

Adopted: 11/25/03

Effective: 1/26/04

Rule Chapter 12D-18 Non-Ad Valorem Assessments and Special Assessments

12D-18.005 *Adoption of Non-Ad Valorem Assessment Roll*

This rule is amended to implement the provisions of Chapter 2003-70, L.O.F., which revises the date of public hearings held for purposes of adopting a new non-ad valorem assessment.

Adopted: 11/25/03

Effective: 1/1/04

Collection Information on the Web

The Department's Revenue Collection Report is posted monthly to our Internet site at www.myflorida.com/dor/taxes. These reports are posted around the fifteenth of each month.

TAAs, continued from page 4

- The city assumes risk of loss for the materials upon delivery, which is clearly established by the requirement in the controlling documents that the city is named as the insured party to receive proceeds in case of loss of the items purchased tax-exempt.
- The remaining terms of the documents do not prevent the conclusion that the city rather than the contractor is, in substance as well as form, the purchaser of the materials.

TAX: Corporate Income Tax

TAA NUMBER: 03C1-004

ISSUE: Request for authority to discontinue consolidated filing

STATUTE CITE(S): Sections 220.131(1), and 220.131(3), F.S.

RULE CITE(S): 12C-1.0131, F.A.C.

QUESTION: May a consolidated group be granted permission to cease filing Florida consolidated corporate income tax returns based upon changes in law combined with fundamental changes in business operations?

ANSWER: The consolidated group was granted permission to cease filing Florida consolidated corporate income tax returns based on the rule provisions which address changes in law and changes in business activities.

TAX: Corporate Income Tax

TAA NUMBER: 03C1-005

ISSUE: Request for authority to discontinue consolidated filing

STATUTE CITE(S): Section 220.131, F.S.

RULE CITE(S): 12C-1.0131(3)(b), F.A.C.

QUESTION: May a parent company be granted permission to cease filing Florida consolidated tax returns without showing changes in law or the organizational structure of the consolidated group?

ANSWER: The parent company was not granted permission to cease filing Florida consolidated tax returns. Changes in the organizational structure of the consolidated group, such as mergers, acquisitions, liquidations, dissolutions, and sales of subsidiaries, divisions, or assets, are not a sufficient basis for deconsolidation when the nature of the business remains the same.

TAX: Corporate Income Tax

TAA NUMBER: 03C1-006

ISSUE: Request for authority to discontinue consolidated filing

STATUTE CITE(S): Sections 220.131(1), 220.131(2), and 220.131(3), F.S.

RULE CITE(S): 12C-1.0131(3)(b), F.A.C.

QUESTION: May an affiliated group be granted permission to cease filing Florida consolidated tax returns without showing changes in law or the organizational structure of the consolidated group?

ANSWER: The affiliated group was not granted permission to cease filing Florida consolidated tax returns. Changes in the organizational structure of the consolidated group, such as mergers and acquisitions of related businesses, are not a sufficient basis for deconsolidation when the nature of the business remains the same.

TAX: Corporate Income Tax

TAA NUMBER: 03C1-007

ISSUE: Alternative apportionment

STATUTE CITE(S): Sections 220.02, 220.03, 220.15, and 220.152, F.S.

RULE CITE(S): Rules 12C-1.015, 12C-1.0152, and 12C-1.0155, F.A.C.

QUESTION: Should the proceeds from the sale of real estate by a partnership, which is in the commercial rental business, be included in the taxpayer's apportionment factor when the taxpayer is a corporate partner of the partnership?

ANSWER: Florida law requires the taxpayer to include its share of the proceeds from the partnership's sale of real property that was used in the partnership's commercial rental business, in its apportionment factor. The inclusion of the proceeds from the sale of real estate that was used in the taxpayer's commercial rental business does not distort the apportionment factor or tax extraterritorial values.

TAX: Intangible Personal Property Tax and Documentary Stamp Tax

TAA NUMBER: 03M-002

ISSUE: Notes – items included in amount financed

STATUTE CITE(S): Sections 201.08 and 199.133, F.S.

RULE CITE(S): 12B-4.051, 12B-4.052, 12B-4.054, and 12C-2.010, F.A.C.

QUESTION: Are documentary stamp taxes and intangible personal property taxes due on insurance premiums charged in connection with loans issued to borrowers when the premiums are included in the amount collected?

ANSWER: No. The insurance premiums are not part of the amount financed, therefore no documentary stamp tax is due on the insurance premiums. Similarly, no intangible tax is due on the insurance premiums, since the principal amount of the notes does not include the insurance premiums.



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